No. 16,053

United States Court of Appeals

For the Ninth Circuit

JEAN DOBLER,
Appellant,

vs.

OLETA STORY,
Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

Honorable O. D. Hamlin, Judge.

APPELLANT'S OPENING BRIEF.

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JURISDICTION.

1. The United States District Court for the Northern District of California, Northern Division, had jurisdiction of this matter pursuant to 28 U.S.C.A. § 1332 which provided:

> "a. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000.00, exclusive of interest and costs, and is between:
> (1) Citizens of different states."

This court has jurisdiction to hear the appeal in this matter pursuant to 28 U.S.C.A. § 1291 which provides:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

2. Paragraph I of the complaint on file in this matter allges:

> "That she is a citizen of the State of California and the defendant Jean Dobler is a citizen of the State of Texas. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars." (R.T. p. 3.)

The answer filed by defendant Oleta Story admits the jurisdictional facts alleged by the complaint (R.T. pp. 6-9).

The district court entered and filed its final decision on March 25, 1958 (R.T. pp. 12-13).

SPECIFICATION OF ERRORS RELIED UPON BY APPELLANT.

I. Error of law by the trial court in finding that the release signed by the plaintiff did not bar recovery by her in this action (R.T. p. 12).

II. Error of the trial court in admitting parole evidence to vary the terms of an integrated written instrument. This evidence was objected to at the time of the trial and the grounds given were as follows:

> "Objected to, your Honor, upon the ground that it calls for evidence attempting to vary the terms of the written document" (RT p. 47); and
>
> "Your Honor, I think that is completely incompetent, irrelevant and immaterial, what she thought, because the theory of meeting of minds under contract was drawn out years ago. It is what is definitely stated in the written word that counts." (R.T. p. 51.)

The evidence thus erroneously admitted was testimony of plaintiff that she thought she was signing a paper for her insurance company to get the money back which it had spent on repairing her car; this was the only thing she understood the contract to accomplish (R.T. pp. 48-56).

INTRODUCTION.

This action was commenced against the named defendant by the filing of a complaint on September 27, 1956. The complaint alleged two causes of action, the first that defendant Jean Dobler negligently operated a certain automobile, and the second that defendant Jean Dobler negligently operated a certain automobile while the agent and servant and while acting within the course of her employment of her employer, Third Doe. Service was effected and defendant Jean Dobler appeared herein by filing her answer on November 19, 1956 (R.T. p. 8). The answer of Jean Dobler denied any negligence and for an affirmative defense alleged that on November 29, 1955 the plaintiff for valuable

consideration released the defendant from all liability to the plaintiff on any and all claims of the plaintiff against the defendant, including the alleged claim set forth in the complaint. The matter came on regularly for trial before His Honor, Judge Oliver D. Hamlin before the court without a jury on December 30, 1957. After hearing the evidence offered on December 30, 1957 the trial was continued until January 24, 1958, at which time further evidence was heard and the case submitted. After due consideration the court ordered judgment for the plaintiff. Findings of fact and conclusions of law were made by the court on March 24, 1958. A motion for new trial was made by the defendant. After consideration, the trial court denied the motion for a new trial. Thereafter this appeal was duly prosecuted.

STATEMENT OF FACTS.

Plaintiff was involved in an automobile accident on October 2, 1955 (R.T. p. 31). Two days after this accident, she reported this accident to an agent of her own insurance company and filled out an accident report for it (R.T. pp. 31-32). At the time she completed this report to her insurance company, she was suffering from headaches and neck pain as a result of the accident (R.T. pp. 34-35). On November 29, 1958 she signed a document before a notary public entitled, "Release of All Claims" (R.T. p. 36 [defendant's exhibit "B"]). Prior to signing this release, plaintiff had received it in the mail from an

agent of her own insurance company (R.T. p. 37). The contract of release reads in full as follows:

"Release of All Claims

For and in consideration of the payment to me/us of the sum of three hundred thirty and 80/100 dollars, the receipt of which is hereby acknowledged, I/we, being of lawful age, do hereby release, acquit, and forever discharge Jean I. Dobler, his/her heirs, executors and assigns, from any and all liability now accrued or hereafter to accrue on account of any and all claims or causes of action which I/we now or may hereafter have for personal injuries, damage to property, loss of services, medical expenses, losses or damages of any and every kind or nature whatsoever, now known or that may hereafter develop, by me/us sustained or received on or about the 2nd day of October, 1955, through automobile accident in or near Greenbrae intersection, Marin County, California, and I/we hereby declare that I/we fully understand the terms of this settlement and voluntarily accept said sum for the purpose of making a full and final compromise, adjustment and settlement of the injuries and damages, expenses and inconvenience above mentioned.

It being further agreed and understood that this settlement is a compromise of a disputed claim and that the payment is not to be construed as an admission on the part of the party or parties hereby released of any liability whatever in consequence of said accident.

I/We further state that the foregoing release has been carefully read and I/we know the con-

tents thereof and have signed the same as my/our own free act and have not been influenced in making this settlement by any representation of the party or parties released.

Executed at San Rafael, this 29th day of November, 1955.

Witnesses:
Mrs. Dawn E. Bowen
Address
4136 Redwood Hwy.,
San Rafael, Calif.

Dorothy McDonald
Address
4136 Redwood Hwy.,
San Rafael, Calif.

CAUTION: READ BEFORE SIGNING BELOW
Thurman Story
Oleta Story
American Insurance Co.
By E. Godsall, General Adjuster

Acknowledgment

State of California,
County of Marin.

Before me, this 29th day of November, 1955, personally appeared Thurman Story and Oleta Story, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she understands its contents and executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29th day of November, 1955. Helen Ruttledge, Notary Public—In and for the State of California, County of Marin."

Plaintiff had ample time to read the document before she signed it (R.T. p. 38). Plaintiff was not forced to sign the release (R.T. p. 28). She was able to read and understand the document (R.T. pp. 39-40). She signed it freely and willingly (R.T. p. 41). Some time after signing the release, she received a check in the sum of $330.81 from her insurance company (R.T. p. 42). She sent this check back to her own insurance company after properly endorsing it, and then in a few weeks she received a check from her insurance company for $100.00 (R.T. p. 43). At no time did defendant Jean Dobler, nor anyone representing her, communicate with plaintiff in regard to the automobile accident or the release which plaintiff signed (R.T. p. 35).

LEGAL ARGUMENT.

I.

THE RELEASE SIGNED BY PLAINTIFF OLETA STORY WAS AND IS A VALID AND BINDING CONTRACT.

1. There was clearly an offer and acceptance of the terms of the contract. Plaintiff received the written contract, which she signed, in the mail (R.T. p. 36). She accepted its terms by signing it before a notary public (R.T. p. 39). The next day she had two persons witness her signature (R.T. p. 39). One who signs an instrument, which on its face is a contract, is deemed to assent to all of its terms, and cannot escape liability on the ground that he has not read it. *Greve v. Taft Realty Co.* (1929), 101 C.A. 343, 351;

281 P. 641; *George v. Bekins Van & Storage Co.* (1949), 33 C. 2d 834, 848; 205 P. 2d 1037. Plaintiff received defendant's written offer and she clearly accepted it by signing it. When there is an offer by one party and acceptance by the other, a contract is created between them. A valid bilateral contract was formed by a mutual exchange of promises. *Tuso v. Green* (1924), 194 C. 574, 580-581; 229 P. 327.

2. There was valid and adequate consideration to support the contract which plaintiff signed.

As recited in the contract which plaintiff signed, it was supported by a promise to pay to defendant $330.80 (defendant's exhibit "B", supra). There is no question, of course, that money is adequate and valuable consideration to support a contract, *Lindley v. Blumberg* (1907), 7 C.A. 140, 144; 93 P. 894. Plaintiff testified that she received a check for $330.80 which she voluntarily endorsed and sent to her insurance company (R.T. p. 42). She later received a check for $100.00 which she endorsed and cashed (R. T. p. 44). She never returned said moneys, nor offered to return them, but used them for her own purposes; never objecting or complaining as to the amount.

When there is valid consideration, the law will not inquire into its adequacy, *Brawley v. Crosby Research Foundation, Inc.* (1946), 73 C.A. 2d 103, 112; 166 P. 2d 392. Where the consideration agreed upon has been accepted, the acceptance constitutes a waiver of any claim of inadequacy, *Lerma v. Flores* (1936), 16 C.A. 2d 128, 130; 60 P. 2d 546.

3. There was no fraud nor deceit used by defendant, nor any agent of defendant, which induced plaintiff to sign the contract of release.

Plaintiff testified that at no time did she deal with defendant Jean F. Dobler, nor with anyone representing her (R.T. p. 35). She received the contract in the mail and had ample opportunity and time to read it (R.T. pp. 36-38). She was able to read and understand the document at the time of the trial (R.T. p. 40). It is obvious that no one was attempting to conceal from plaintiff what the document said. If someone had been attempting to do this, he certainly would not have sent the contract to her giving her ample opportunity to read it and if she wished, seek advice. At the time she signed it no one was present, except her husband and the notary (R.T. p. 41).

4. There was absolutely no duress or force used to make plaintiff sign the release. She testified to this several times. When asked whether or not she was forced to sign it, she replied without hesitation that she was not forced to sign it (R.T. pp. 39-40). She stated upon questioning that she signed it *freely and willingly* (R.T. p. 41).

5. There was no *mutual mistake* of the parties when this contract was entered into. There is absolutely nothing in the transcript of record of this case which even suggests, let alone shows, that there was any mutual mistake attendant upon the making of this contract. A party claiming mistake, as the plaintiff is claiming in this action, must establish the mistake, as the law does not presume mistake of fact.

Megee v. Fasulis (1943), 57 C.A. 2d 275, 285; 134 P. 2d 815. Plaintiff has completely failed to show any mutual mistake or any mistake whatsoever.

6. There was no *unilateral mistake* on plaintiff's part when she signed the release. The only ground upon which plaintiff attacks the validity of the release signed by plaintiff is that said release was signed because of a unilateral mistake on plaintiff's part. It is the well settled rule that if there is no ambiguity in the language of the contract, and neither party is at fault, unilateral mistake will not prevent formation of a contract. Under the objective test, a "meeting of the minds" is unnecessary, and a party may be bound though he misunderstood the terms of the proposed contract, and actually had a different undisclosed intention, *Brant v. California Dairies, Inc.* (1935), 4 C. 2d 128, 133; 48 P. 2d 13. In *Brant v. California Dairies, Inc.* supra, the parties had written a series of letters in regard to an agreement to market milk. The defendant argued that the contract was not binding since he believed that the contract meant something other than was written. The court stated that the outward manifestation or expression of assent is controlling in the absence of mistake or fraud. That is exactly the situation in the present case. There was no mistake on the part of the plaintiff; she merely believed that the document she signed enabled her insurance company to get back its money from defendant's insurance company (R.T. pp. 54-55), in spite of the clear language of the document that she signed which released all claims against defendant. Plaintiff did not communicate this belief

to anyone, nor did she make any mention of this undisclosed intention.

When a party, negligent in not informing himself of the contents of a written contract, signs and accepts the agreement with full opportunity of knowing the true facts, he cannot, in the absence of fraud or misrepresentation, avoid liability on the ground that he was mistaken concerning the terms. He cannot be heard to say that he did not read the contract and does not know its contents. *Knox v. Modern Garage & Repair Shop* (1924), 68 C.A. 583, 587; 229 P. 880; *Greve v. Taft Realty Co.* (1929), 101 C.A. 343, 351; 281 P. 641; *Palmquist v. Mercer* (1954), 43 C. 2d 92, 98; 272 P. 2d 26. There is no claim in this case that there was fraud or misrepresentation by the defendant or any agent of defendant for the simple reason that neither defendant nor any agent of defendant ever contacted or communicated in any way with plaintiff prior to the time she signed the release. Plaintiff admits she is able to read and understand the release (R.T. p. 40). Now, however, plaintiff claims that the release should not be binding upon her because she was mistaken as to what she thought it said. She was not interested enough at the time to even read it. The release was sent through the mail to her residence (R.T. p. 36). No one rushed her or told her not to read the release. She had ample opportunity to read it before she signed it and sent it back to her agent (R.T. p. 38). At the time she signed the release, her neck and head were hurting her as a result of the accident (R.T. pp. 72-86), yet she signed

a document absolving defendant of any and all liability to her for any injuries she might have suffered in the accident. There is no issue as to whether or not she was injured when she signed the release; there was no mistake in this regard. Plaintiff has absolutely failed to show any mistake on her part which would allow her to avoid the terms of the contract which she willingly signed. It was incumbent upon her to establish any such mistake. *Megee v. Fasulis,* supra.

The only showing which might possibly be said that she has made is that she did not read the instrument, and because of this was mistaken as to its contents. As pointed out above, one signing a contract without informing himself of its contents when he has ample opportunity to do so cannot avoid liability on ground he was mistaken concerning its terms, in absence of fraud or misrepresentation. *Knox v. Modern Garage & Repair Shop,* supra.

II.

PLAINTIFF DID NOT COMPLY WITH THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE RELATING TO RESCISSION OF A CONTRACT.

1. § 1566 C.C.P. states:

"A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the chapter on rescission."

§ 1567 C.C.P. goes on to say that:

"An apparent consent is not real or free when obtained through . . . 5. Mistake."

In the case at bar plaintiff's only contention is that she is able to avoid the effect of the release which she signed because there was an unilateral mistake on her part as to its effect. Assuming for the purpose of argument that there was a mistake present which would allow rescission and avoidance of this contract, it would be necessary for plaintiff to follow the procedure set forth by the California Code of Civil Procedure. Even if there had been an unilateral mistake, the contract would not be void, but merely voidable. § 1566 C.C.P.

A voidable contract is valid until disaffirmed by the party entitled to avoid it. *Matthews v. Ormerd* (1903), 140 C. 578, 582; 74 P. 136; *Garcia v. California Truck Co.* (1920), 183 C. 767, 769, 770; 192 P. 708.

Since in case of mistake a contract is only voidable and not void, it becomes incumbent upon the party wishing to avoid the contract to follow certain steps. § 1566 C.C.P. states that the contract

> "... may be rescinded by the parties in the manner prescribed by the Chapter on Rescission."

The chapter on Rescission in the C.C.P., § 1691, sets forth the procedure necessary to effect rescission when it is not effected by consent. Calif. C.C.P. § 1691 reads as follows:

> "Rescission, how effected. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitled him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so."

2. It is to be noted that the first requirement is that the party must rescind promptly upon discovering the facts which entitle him to rescind assuming, of course, that he is free from duress, menace, undue influence, or disability and he realizes he has a right to rescind. There is no evidence in this case that there was any duress, menace, undue influence, or disability.

In the case of *Gedstad v. Ellichman* (1954), 124 C.A. 2d 831, 834; 269 P. 2d 661 wherein the plaintiff was seeking to avoid a contract, the court stated that when one is seeking to rescind a contract, diligence must be shown by him; whereas in other actions laches is an affirmative defense to be alleged by the defending party. The court further stated that a delay of more than one month in serving notice of rescission requires explanation.

In the case at bar, plaintiff at no time rescinded the release. Assuming that she had forgotten or did not know she signed a release, it certainly was brought to her attention when defendant specifically pleaded the release as a bar to the action in her answer (R.T.

p. 7). Said answer was filed with the court on November 19, 1956 and served by mail upon plaintiff's attorney (R.T. p. 8). Yet plaintiff still elected to take no action to attempt to avoid the effect of the release. Even at the time of trial plaintiff did not give notice of rescission. The transcript of record is absolutely devoid of any offer to rescind. Over nine months elapsed from the time plaintiff signed the release and the time she filed her verified complaint (R.T. pp. 6, 36). Nothing at all was done by plaintiff during this period which would indicate to defendant that she was going to attempt to avoid the consequences of the general release which she signed.

More than one year elapsed between the time defendant filed her answer affirmatively pleading the release signed by plaintiff and the time the case came before the court for trial. Again absolutely nothing was done by plaintiff indicating that she wished to avoid the effects of the contract she had voluntarily entered into.

From the time that the fact she had signed a release was clearly pointed out to her by defendant's affirmatively pleading it until the present time, plaintiff has been represented by legal counsel. It certainly cannot be said, in view of this, that she was without legal advice and did not know what her rights and duties were. It must be presumed that these were pointed out to her by her counsel.

3. Not only is it necessary to give notice of rescission promptly, but it is necessary to restore to the other party everything of value which the party wish-

ing to rescind has received under the contract (California C.C.P. § 1691). In this case there was absolutely no evidence that there had been restoration of the money which plaintiff received pursuant to the contract. On the contrary, it appears that plaintiff's counsel thought that it might be a good idea to offer to restore the money at the time of trial, but then for some reason did not do so (R.T. p. 30).

Plaintiff's counsel's exact words are as follows:

> "Now, when I came into Court and made this statement earlier, I just wanted to point that fact out to you and then go on to say if counsel wants us to make a formal tender of what he considers what the California law is, I will make it because I believe we can do it at any time.
>
> The Court. Well, I don't think you can go on the basis that if counsel wants you to do something. I think you should do whatever you want to do yourself and then let's determine whether it is sufficient or not. But I don't think you can take the position that you will only do something if counsel wants you to do it.
>
> Mr. Fernandez. No. I wanted to be sure I had that covered under all circumstances, your Honor.
>
> The Court. All right." (R.T. p. 30.)

After the foregoing remarks, neither plaintiff nor plaintiff's counsel ever brought up the subject of restoration again. What was said certainly cannot be considered an offer to restore since the remark was addressed to the court and was contingent upon defendant's attorney wanting plaintiff to restore. As the court properly pointed out, it isn't what opposing

counsel wishes, it is what the law requires. No restoration was subsequently offered or made by plaintiff.

4. The language of California C.C.P. § 1691 requiring prompt notice of rescission and restoration of things of value received under the contract is not merely permissive or suggestive, but on the contrary it is mandatory. The section states in clear language that it provides the only way which rescission can be accomplished other than by consent of the parties.

The findings of fact, as made by the court in this case, do not state that plaintiff complied with either of the requirements of California C.C.P. § 1691. Compliance with these provisions is necessary in order for plaintiff to avoid the effects of the contract she signed and consented to. The only reference to the release to be found in the findings of fact is the following:

> "That at the time that the plaintiff signed a release of all claims, releasing defendant from all liability for the accident of October 2, 1955, the plaintiff did not know or understand that the release signed by her covered her claim for personal injuries, and that the plaintiff believed that at the time she signed the release she was releasing only her claim for property damage to her 1955 Chevrolet automobile, owned jointly by plaintiff and her husband" (R.T. p. 11).

In its conclusions of law, the court stated in Paragraph II:

> "That the release signed by the plaintiff did not bar recovery by her in this action."

There is absolutely nothing upon which to base this conclusion of law in that there is no finding of fact

that plaintiff rescinded the release which she entered into, or any other reason why she could avoid her valid contract of release. Actually there was no finding of fact by the court that there was a mistake by plaintiff, but merely a general finding that she did not know or understand that the release signed by her covered her claim for personal injuries. This is not a finding of mistake which would allow rescission.

In *Cilibrasi v. Reiter* (1951), 103 C.A. 2d 397, 399; 229 P. 2d 394 the court states the law as follows:

> "It is a familiar principle of adjective law that in the absence of the rescission of a contract of settlement of a claim for personal injuries accomplished according to law, and of restoration of the consideration paid for the release of the claim the release of the tort feasor is a valid contract and prevents recovery on the disputed claim."

In the case at bar plaintiff is bound by the contract of release which she signed, and it is a bar to any action on her claim.

III.

TO ALLOW PLAINTIFF TO AVOID THE CONSEQUENCES OF THE CONTRACT OF RELEASE WHICH SHE VOLUNTARILY SIGNED WOULD LEAD TO UTTER CONFUSION AND MAKE A MOCKERY OF CONTRACT LAW.

1. The contract which plaintiff signed only consisted of 28 lines of printed material, including the acknowledgment (defendant's exhibit "B", supra). It was certainly not an onerous task for plaintiff to

read this very simple document. At the top of the document it states in large bold face type that it is a "RELEASE OF ALL CLAIMS." Immediately above the line where plaintiff signed, there is the further warning in capital letters: "CAUTION: READ BEFORE SIGNING BELOW".

Yet in spite of all this, plaintiff now claims she did not read the document and did not know what terms it contained. Now plaintiff claims that because she didn't read it, although she had ample opportunity to do so (R.T. p. 38), she isn't bound by it. If this proposition is true, then no contract ever entered into has any value whatsoever. If the party who signs the contract later decides it would be to his benefit not to be bound by it, he need only say he didn't read it and therefore didn't realize what its terms were. This is all that would be necessary to completely avoid the effects of the contract. This is not the law. If it were, contracts would be mere shams. There would be no way that a person in plaintiff's position could be bound, since although one could try and make a person read a contract, one would never know for sure that he actually read it or merely looked at it.

Business dealings and other matters based on contracts would be merely a gamble that the parties would carry through the agreement since at any time they could ignore it by using the theory of plaintiff in this case. Public policy would not allow such a situation to exist. Releases in law are considered favorably and are encouraged. *Cilibrasi v. Reiter,* supra. If plaintiff's position prevails, no disputed

claim would ever be settled since the party attempting to settle would never be sure he would be released from liability.

IV.

THE TESTIMONY OF THE PLAINTIFF AS TO WHAT SHE WAS TOLD ABOUT THE CONTRACT AND WHAT SHE UNDERSTOOD IT TO MEAN WAS IMPROPERLY ADMITTED BY THE TRIAL COURT.

1. § 1625 of the California Civil Code states:

> "[Effect of written contract.] The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument."

§ 1856 of the California Code of Civil Procedure states:

> "An agreement reduced to writing deemed the whole. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:
>
> 1. Where a mistake or imperfection of the writing is put in issue by the pleadings;
>
> 2. Where the validity of the agreement is the fact in dispute. But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates,

as defined in section eighteen hundred and sixty, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties."

It is almost universally agreed that the parole evidence rule is not a mere rule of evidence concerned with the method of proving an agreement. Extrinsic evidence is excluded since it cannot possibly show what the agreement was since this is determined as a matter of law to be the writing itself. *VanFleet-Durkee, Inc. v. Oyster* (1949), 91 C.A. 2d 411; 205 P. 2d 32; *El Zarape, etc. Factory v. Plant Food Corp.* (1949), 90 C.A. 2d 336, 344; 203 P. 2d 16; *Guerin v. Kirst* (1949), 33 C. 2d 402, 410; 202 P. 2d 10.

If on its face, the document purports to be a complete expression of the agreement, it is conclusively presumed to contain all of the agreed terms, and extrinsic evidence is excluded. *Thoroman v. David* (1926), 199 C. 386, 390; 245 P. 513; *El Zarape etc. Factory v. Plant Food Corp.* supra.

The document signed by plaintiff in this case (defendant's exhibit "B", supra) is clearly an integrated document. There is nothing indicated in the agreement which would make it necessary to look outside the document for interpretation. It is clear and complete on its face.

The evidence introduced by plaintiff and admitted into evidence tended to show that the agreement was not intended to cover her personal injuries although the agreement clearly states that it does cover personal

injuries. Any such evidence clearly tends to vary the terms of this written document and so is inadmissible.

CONCLUSION.

For the reasons stated herein, it is respectfully submitted that the judgment of the trial court below should be reversed and the cause remanded with a direction to the trial court to enter judgment for the defendant Jean Dobler.

Dated, San Jose, California,
January 16, 1959.

Respectfully submitted,
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NOEL B. GASSETT,
Attorneys for Appellant.